

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY - 4 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of the Pay Telephone )  
Reclassification and Compensation )  
Provisions of the Telecommunications ) CC Docket No. 96-128  
Act of 1996 )  
 )  
AT&T Request for Limited Waiver )  
Of the Per-Call Compensation Obligation )

To: Chief, Common Carrier Bureau

PETITION FOR RECONSIDERATION

Sprint Corporation hereby seeks reconsideration of the Bureau's April 3, 1998 Order in the above-captioned proceeding (DA 98-642), to the extent it prescribes interest at 11.25% per year for payments for the fourth quarter of 1997 that are made after April 1, 1998. As Sprint will explain below, this rate is too high and is inconsistent with a long history of FCC precedent employing rates set by the Internal Revenue Service.

The Bureau's April 3 Order established mechanisms for computing payphone compensation on a per-phone basis instead of a per-call basis. These mechanisms would be used by all carriers for payphones in non-equal access areas,<sup>1</sup> and could be used by

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<sup>1</sup> In this connection, the April 3 Order, as clarified by the Bureau's April 10 Order (DA 98-701), specified that compensation for phones in non-equal access areas would only be paid by the ten largest carriers. Because the amount prescribed is so small (\$0.49 per month per phone in Sprint's case), Sprint is not challenging that limitation. However, Sprint notes that limiting interim compensation to a selected number of carriers was judicially reversed in Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555

carriers for phones in equal access areas that do not generate payphone-specific ANI digits. In ¶3 of the Order, the Bureau observed that an earlier order had required payments for the fourth quarter of 1997 to be made no later than April 1, but acknowledged that in light of this order, carriers would need additional time. The Bureau's order then stated (¶3):

Thus, IXC's may make this payment no later than April 30, 1998, but must include additional interest for the period after April 1, 1998, at the rate of 11.25 percent simple interest per year, if the payment was not made by April 1, 1998.

No explanation of the basis of this interest rate was set forth elsewhere in the April 3 order.

What is involved here is compensation for late receipt of Commission-mandated payments. Analytically, this is no different than interest on Commission-mandated refunds, and the Commission's uniform practice has been to require that such interest be paid at the rates set by the Internal Revenue Service.<sup>2</sup> Sprint is informed that the current IRS rate is eight percent, far lower than the 11.25 percent rate prescribed (without any notice or opportunity to comment) in the Bureau's April 3 Order.

Sprint is aware of the fact that, in calculating the per-call compensation rate in the Second Report and Order in this proceeding,<sup>3</sup> the Commission utilized interest at the rate

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(D.C. Cir. 1997), and Sprint reserves the right to challenge this approach in the future in the event it is applied to a larger category of payphones or to a larger monetary amount.

<sup>2</sup> See, e.g., Cablevision Systems Corporation, FCC 98-44, released March 29, 1998; Beehive Telephone Company, Inc. et al., FCC 98-1, released January 6, 1998, 1997 Annual Access Tariff Filings (CC Docket No. 97-149), FCC 97-403, released December 1, 1997, paragraph 226.

<sup>3</sup> 13 FCC Rcd 1778, 1805-06 (¶60) (1997).

of 11.25 percent to take account of the delayed receipt of compensation, and found that this was an appropriate cost of capital for the payphone providers. Sprint believes the Commission was in error then in substituting a full return on capital investment for what in fact is only the short term cost of money, and that the Second Report and Order, like the Bureau's April 3 Order, is an unexplained departure from past precedent. However, Sprint did not seek reconsideration of the Second Report and Order but instead chose to challenge the order directly in the U.S. Court of Appeals because of even more egregious flaws in the compensation rate set therein.

Although the Bureau gave no explanation for its adoption of the 11.25 percent interest rate, Sprint assumes that the Bureau may have relied on the Commission's use of that rate in the Second Report and Order. However, two wrongs do not make a right, and nothing in the Commission's Second Report and Order purported to require the use of that rate of interest for any other purpose. Thus, Sprint believes the Bureau was free to adopt the IRS rate, consistent with past Commission precedent, and was indeed obligated by such precedent to do so in this case. However, in the event that the Bureau felt constrained by the Commission's action in the Second Report and Order, we note that §1.429(a) of the Rules permits the Bureau to refer the question here presented to the full Commission for action. Sprint emphasizes that it is not seeking belated reconsideration of the use of the 11.25 percent rate for the limited purpose for which the Commission employed it in the Second Report and Order,<sup>4</sup> but only in the context of the new directive in the April 3 Order that interest be paid for payments made after April 1.

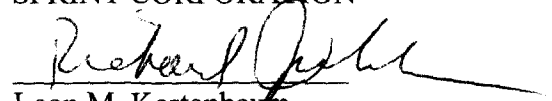
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<sup>4</sup> However, in the event the Court reverses the Commission's Second Report and Order, Sprint will reserve the right to argue on remand, that the Commission's previous interest allowance was excessive.

In short, Sprint urges the Bureau to reconsider its April 3 Order and direct that interest for payments made after April 1 be set at the applicable IRS rates. Alternatively, if the Bureau believes itself to be bound by the Commission's action in the Second Report and Order, the Bureau should refer this issue to the Commission, and the Commission should grant this petition.

Respectfully submitted,

SPRINT CORPORATION

A handwritten signature in black ink, appearing to read "Leon M. Kestenbaum", is written over a horizontal line.

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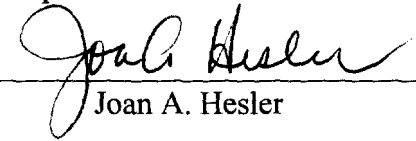
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May 4, 1998

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Reconsideration of Sprint was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 4<sup>th</sup> day of May, 1998 to the below-listed parties:

  
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